IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

CRL.A.No. 486 of 1998()

CC.26/1997 of ENQUIRY COMMR. & SPL. JUDGE, TRIVANDRUM

.....

APPELLANT: ACCUSED NO.1.

THOMAS. S/O.ABRAHAM, ROY VILLA,
MADAVILA,
AMMAKANTAKERA, PERIGANADU VILLAGE,
(RETIRED FIELD EXECUTIVE, C. DIVISION ,
BLOCK NO.9, KODUMAN ESTATE).

BY ADV. SRI.B.RAMAN PILLAI
SRI.S.VIJAYAKUMAR

RESPONDENTS:

STATE OF KERALA, REP.BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 10/01/2007, ALONG WITH CRA NO. 490 OF 1998 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl. Appeal Nos. 486 & 490 of 1998

Dated this the 10th day of January, 2007

Judgment

Accused, five in number, were charge-sheeted under section 13 (2) read with section 13 (1) (c) and (e) of the Prevention of Corruption Act, 1988 and sections 409 and 120-B of the Indian Penal Code. The allegation was regarding cutting and removal of rubber trees from an estate called 'Koduman Estate' belonging to the Plantation Corporation of Kerala Limited, a Government undertaking. An agreement for cutting and removal of rubber trees was entered into by the Plantation Corporation and A2 from 'C' Division of Block No.9. Date of agreement was 15.2.1994. During February and March, 1994 first accused was the Field Executive of 'C' Division, Block No.9 of Koduman Estate. Fifth accused was the Estate Manager of that estate. Third and fourth accused are brothers of the second accused who was awarded contract for cutting and removing the slaughter tapping of rubber trees of other blocks in 'C' Division. It is also the case of the prosecution that they are doing the work in partnership. Second accused has

remitted a sum of Rs.13,67,311/- by various occasions towards the value of 3,250 rubber trees, but, removed 5,024 rubber trees on the basis of Ext.P1 agreement and first and fifth accused allowed accused 2 to 4 to cut and remove 1,774 rubber trees worth Rs.6,92,592/- for which value was not paid. It is the case of the prosecution that accused Nos.1 and 5 committed criminal breach of trust and criminal misconduct in respect of 1,774 rubber trees at Rs.6,92,592/- and accused Nos.2 and 4 had got undue pecuniary advantage amounting to the above amount because of the abuse of office by accused Nos.1 and 5 in pursuance of the criminal conspiracy. Ext.P1 is the agreement.

2. At the time of tender, 10% of the total bid amount was remitted as can be seen from clause 2 of the agreement. Clause 3 deals with schedule for payment as well as cutting and removing of rubber trees. Clause 3 of Ext.P1 is as follows:

> "3. The purchaser has also remitted an amount of Rs.4,41,438/- (Rupees Four lakhs forty one thousand four hundred thirty eight only) being 20% of the total consideration against cash receipt No.1786 dated 14.2.1994 as an advance towards the total consideration. He has also remitted interest

of Rs.81,594.55. The balance purchase price of Rs.17,65,752/- (Rupees seventeen lakhs sixty five thousand seven hundred and fifty two only) shall be paid by the purchaser in ten monthly instalments on or before the dates shown hereunder and the purchaser shall cut and remove the trees from the scheduled property as shown hereunder:-

Date on or before as applicable to similar contracts	Amount of Instalment (Rs.)	No.of trees to be cut and removed (Nos.)
1. 25.06.1993 (5%)	88,288/-	254
2. 25.07.1993 (5%)	88,288/-	254
3. 25.08.1993 (5%)	88,288/-	254
4. 25.09.1993 (5%)	88,288/-	254
5. 25.10.1993 (10%)	1,76,576/-	508
6. 25.11.1993 (15%)	2,64,864/-	762
7. 25.12.1993 (15%)	2,64,864/-	762
8. 25.01.1994 (20%)	3,53,144/-	1010
9. 25.02.1994 (10%)	1,76,576/-	508
10. 10.03.1994 (10%)	1,76,576/-	508
Total	17,65,752/-	5074

It can be seen from the above that 30% of the amount already paid was adjusted towards five instalments and the total amount including the above 30% of the total value of 5,074 trees. The agreement was executed on 15.2.1994. The agreement contemplates cutting and removing of 3250 rubber trees. There is no case for the

prosecution that the cutting and removing of trees started before the date of agreement. Therefore, it can be seen that the schedule was not followed by both parties. If it was according to the schedule, 80% of the work would have been over by 25.1.1994. The agreement was executed only on 15.2.1994. It was executed only by A2 and the complainant. The trial court found that A3 and A4 are not involved in the matter as they are not parties to the contract and the contract is only with A2 and A3 and A4 were acquitted. The trial court found that A5 is the manager of the estate. It is only a general supervision and there is no evidence to connect with any criminal conspiracy or breach of trust. Accordingly, he was also acquitted. No appeal has been filed by the State against the acquittal of A3, A4 or A5.

3. PW1, former General Manager of the Plantation Corporation, deposed that first and fifth accused were the field executive and estate manager respectively during the period. PW2 deposed that he was the senior manager of Koduman Group of Estates and accused No.5 was the estate manager. PW3 Personnel Officer was also examined to prove the same. PW4 who was the confidential assistant to the General Manager was

examined to show that first accused was the field executive of 'C' division of Koduman estate. Evidence of PWs 6 and 9 were mainly relied on by the prosecution. PW6 is the field assistant of Koduman estate, 'C' Division during the period 1993-94. There were 3,300 trees and the trees were removed during the year 1993. He also deposed that the people who are taking contract will have to get in touch with the field executive. On one day, A1 came late to the office and stated that he has allowed to remove the trees believing that value of the trees would be remitted and he committed a mistake in believing him. The other employees also started hue and cry. He further deposed that he is not aware the date when A1 came late to the office. He also stated that during the period when trees were cut and removed, A5 also came to the place. He again deposed that about 48 gate passes were written by him and other passes were written by A1. He further deposed that he could not count the trees and A1 was entrusted the charge to count the trees. He deposed as follows:

He also deposed that trees were removed from other division also. But, according to him, the trees were earlier counted and passes were given so that trees cannot be removed unauthorisedly.

4. PW9 is another witness relied on by the prosecution. He was the field executive and he stated that A1 was the field executive for block No.9 of 'C' Division and trees were counted. According to him, work order was to cut 3,000 trees, but, the entire trees were cut and the matter was reported. PW9 also deposed that the entire trees were cut, but, some of the trees were there at that time. He further deposed that he handed over charge to PW6. He did not give any record as the number of trees in the estate at the time of handing over charge. It has come out in evidence that as per the record there were 5074 trees in Block No.9 of 'C' division and A1 was the field executive and A2 was the contractor to cut and remove the trees. According to the prosecution, the entire trees by 1993-94, but, full amount was not paid and there was a shortage of payment for 1,774 trees. It is the contention of A1 that he has reported the matter that the amount was not paid as per schedule of 10.3.1994 by Ext.D3 letter. By Ext.D3

letter, he noticed that the entire amount as per the schedule was not paid. Despite Ext.D3, A5 did not take any action. In fact, he subsequently enquired with the contractor. Evidence of PW9 shows that the matter was reported and the entire trees were cut, but, some of the cut trees were not yet removed. It is the case of A2 that, as per the schedule, nine months' time is there to cut and remove the trees. According to him, even though it is the case of the Corporation that there was 5,074 trees in 'C' division of 9th block, actually, the trees were much below in number. He also filed a civil case stating that number of trees available to cut and remove was less. According to his defence, amount has been paid for the entire trees and if at all any amount is due on the basis of Ext.P1 agreement, it is only a civil liability. Apart from the fact that at the time of giving pass, A2 talked to A1, there is no evidence of criminal conspiracy between A1 and A2. Without the knowledge of A5, it would not have happened and if A2 had conspiracy with A1, he would not have written Ext.D3 letter to A5. However, against acquittal of A5, no appeal has been filed. Totality of evidence shows that there was a real dispute between the management as well

as A2 contractor regarding the number of trees and regarding the amount payable. Contending that full amount was not paid, A2 filed a case before the Munsiff's Court alleging that there were shortage of trees and claiming damages. Management has also filed a case. Finally, a joint petition was filed in O.S. No.597 of 1994 filed by the plaintiff Corporation along with O.S. No. 278 of 1994 and 442 of 1994. In the joint petition it is stated that as follows:

> "1. The parties have settled the above suits out of court and all the three suits may be dismissed as not pressed.
>
> 2. Half the court fee paid may be refunded to the respective plaintiffs in the three suits.
>
> In the above circumstances, it is prayed that this compromise may be recorded accordingly and a decree passed in accordance therewith."

Here, the matter was compromised and civil disputes were over. Decree was also passed accordingly.

In the above circumstances, it cannot be stated that A2 has received any undue amount against the contractual provisions or A1 has entered into criminal conspiracy with A2. In these circumstances, I am of

opinion that the charges against A1 and A2 are also not proved. Hence, conviction and sentence on A1 and A2 are set aside and appeals are allowed and the accused are acquitted.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL Nos.486 & 490/98

Judgment

Dated:10th January, 2007